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June 16, 2004

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: WCB Docket Nos. 01-338 and 96-98
Notice of *Ex Parte* Presentation

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, the undersigned counsel hereby provides notice of a June 15, 2004 *ex parte* meeting with Daniel Gonzalez, Senior Legal Advisor to Commissioner Martin, in the proceedings identified above. In attendance at the meeting were: Brad Mutschelknaus and Steven Augustino of Kelley Drye & Warren LLP; Heather Gold of The KDW Group; Rebecca Sommi of Broadview Networks; Christopher McKee of XO Communications; Jake Jennings of NuVox Communications; and James Falvey of Xspedius Management Company.

The CLECs discussed the court's remand in *USTA v. FCC*, 359 F.3d 554 (DC Cir. 2004) and the deficiencies in the BOCs' "status quo" commitment letters. The enclosed materials were distributed at the meeting.

KELLEY DRYE & WARREN LLP

Ms. Marlene H. Dortch
June 16, 2004
Page 2

In accordance with Section 1.1206(b), one copy of this notice is being provided for each docket.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven A. Augustino". The signature is stylized with a large, sweeping initial "S" and a distinct "A" and "Augustino" following.

Steven A. Augustino

SAA/pab

Enclosure

WHAT THE SO-CALLED UNE “BOC COMMITMENT” LETTERS DO NOT SAY

June 15, 2004

Broadview Networks
KMC Telecom
NuVox Communications
Xspedius Communications
XO Communications

Brad Mutschelknaus
Steve Augustino
Kelley Drye & Warren LLP

- SBC

- Does not preclude seeking state commission approval to raise UNE rates
- Fails to commit to UNE pricing for “entrance facilities”
- Does not define “mass market”
- Does not specify that the promise covers new orders
- Does not expressly preclude backbilling or retroactive “true-up”

- **BELLSOUTH**

- Does not preclude seeking state commission approval to raise UNE rates
- Does not promise to refrain from withdrawing UNEs
- Does not explain what is a “current” interconnection agreement
- Does not define “mass market”
- Does not specify that the promise covers new orders
- Does not expressly preclude backbilling or retroactive “true-up”

- Verizon

- Promise is limited to “narrowband” UNEs
- Does not preclude seeking state commission approval to increase UNE rates
- Price commitment is limited to UNE-P
- Mass market defined as customers with less than 4 lines
- Does not make clear that the 90-day notice of future price changes will be made only after the expiration of the 5 month standstill period
- Does not expressly preclude backbilling or retroactive “true-up”

- Qwest
 - Does not make any commitment for loop/transport UNEs
 - Does not promise to refrain from withdrawing UNEs
 - Does not expressly preclude backbilling or retroactive “true-up”

- **Potential Solutions**

- Require all BOCs to execute ICA amendments making all UNEs and UNE combinations existing as of 6/15 available at current rates until the remand proceeding is concluded; or
- Promulgate emergency interim rules that formalize the RBOC commitments and fill in the holes